

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GERALD GRIFFIN,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Respondent.

) Case No. DEMO-01-0012

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the conference room at the Eastern State Hospital in Spokane, Washington, on November 4, 2003. BUSSE NUTLEY, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Gerald Griffin was present and was represented by Christopher Coker, Attorney at Law, of Parr & Younglove, P.L.L.C. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant spoke to a co-worker in an abusive, intimidating manner with a loud voice and directed profanity at the co-worker.

II. FINDINGS OF FACT

2.1 Appellant is a permanent employee for Respondent Department of Social and Health Services (DSHS). Appellant was hired as a Mental Health Licensed Practical Nurse 4 at Eastern State Hospital in 1985. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 23, 2001.

2.2 By letter dated March 14, 2001, Harold Wilson, Chief Executive Officer, informed Appellant of his demotion from Mental Health Licensed Practical Nurse 4 to Mental Health Licensed Practical Nurse, 2 effective April 1, 2001. Mr. Wilson charged Appellant with neglect of duty, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleged that Appellant spoke to co-worker Trisha Weston Low in an abusive, intimidating manner, while using a loud voice and wild gesticulations. Respondent also alleged that Appellant directed profanity at Ms. Weston by shouting, "This is bullshit."

2.3 Appellant has been the subject of prior formal disciplinary action and has a history of prior counseling and letters of reprimand. Appellant's personnel file includes the following:

- A January 3, 2001 letter of reprimand for unauthorized absence and failure to follow Eastern State Hospital's Nursing Procedure.
- A January 24, 2000 letter of reprimand for unauthorized absence and failure to follow Eastern State Hospital's Nursing Procedure.
- A January 24, 2000 letter of counseling for tardiness, absenteeism, and improper reporting of absence.
- A July 19, 1998 letter notifying Appellant of his demotion from Mental Health Technician 4 to Mental Health Technician 2B for sleeping while on duty.

- A January 14, 1997 letter notifying Appellant of his reduction in salary for three months after an unauthorized absence and failure to comply with written directives and policies.
- A May 19, 1996 letter of reprimand for unauthorized absence and failure to follow written directives.
- A March 8, 1995 letter of counseling for Appellant's use of unscheduled sick time.

2.4 Appellant's performance evaluations from July 1986 through July 1988, and from July 1994 through August 2000, addressed concerns regarding Appellant's failure to follow procedures and his interactions with co-workers. The July 1987 through July 1988 performance evaluation included comments that Appellant "compromised his position of leadership by behaving and assigning ward jobs in an almost capricious manner;" "had difficulty forming effective working relationships with subordinates and supervisors"; and also mentions "unprofessional behavior involving a co-worker." The July 1998 through July 1999 performance evaluation included the comment that Appellant "communicated in a way that has upset co-workers."

2.5 Eastern State Hospital Policy 2.9 (Patient Abuse Policy: Procedure for Reporting) states that all patients have the right to an environment free of abuse.

2.6 DSHS Administrative Policy 6.04 (Standards of Ethical Conduct for Employees) directs employees to create an environment free from intimidation, retaliation, and hostility. The policy further directs employees to interact with co-workers in a respectful and courteous manner.

2.7 Eastern State Hospital Policy 1.37 (Non-Patient Care Problem Solving) addresses situations when a problem arises between staff members and directs employees to avoid blame and focus on solving the problem.

1 2.8 Eastern State Hospital Policy 1.41 (Workplace Violence) defines workplace violence as
2 “any action on the part of one person to create a hostile work environment for another through the
3 use of fear or intimidation.” It further defines “words, gestures, or actions that alarm” and
4 “offensively coarse language” as intolerable.

5
6 2.9 Shortly before December 19, 2000, Trisha Weston Low, Mental Health Technician 3,
7 performed a routine cleaning of the employees’ refrigerator during her work shift. In doing so, she
8 followed the established procedure of discarding items that were not labeled or dated.

9
10 2.10 On December 19, 2000, Appellant approached the nursing station and pointed his finger at
11 Ms. Low and said in a loud voice, “I have a bone to pick with you.” At first Ms. Low thought
12 Appellant was joking; however, she realized by the serious look on his face that he was very upset
13 with her. Appellant approached Ms. Low and said, “You threw out my water bottle.”

14
15 2.11 Ms. Low asked Appellant which water bottle he was referring to. Appellant described the
16 bottle to her and claimed she knew it was his bottle, when she threw it away. Ms. Low explained to
17 Appellant that she did not know it was his water bottle, and she had simply followed established
18 procedures for cleaning the refrigerator. Ms. Low stated she would not have thrown out
19 Appellant’s bottle if it had his name on it. During Ms. Low’s explanation, Appellant repeatedly
20 said, “That is bullshit.” Ms. Low was embarrassed and offended by Appellant’s behavior.

21
22 2.12 Ms. Low reported the incident by memo to Debbie Lillquist, Acting Nurse Executive. In her
23 memo, Ms. Low stated that the incident had been witnessed by Eastern State Hospital patients and
24 Don Egan, Registered Nurse 2. That same day, Ms. Lillquist requested that Mr. Egan write a memo
25 to document what he had observed.

1 2.13 Later during the work shift, Mr. Egan stated to Ms. Low that he was shocked and
2 intimidated by Appellant's behavior. Mr. Egan apologized to Ms. Low for not attempting to
3 intervene on her behalf during Appellant's interaction with her at the nurse's station.

4
5 2.14 On January 4, 2001, Ms. Lillquist conducted a fact-finding meeting with Appellant and his
6 union representative. Appellant admitted that he had been upset with Ms. Low for throwing out his
7 water bottle, had raised his voice while speaking to her, and said, "I have a bone to pick with you."
8 Appellant stated he had not been aware of any patients nearby at the time of his interaction with Ms.
9 Low. Ms. Lillquist completed a Conduct Investigation Report in which she concluded that
10 Appellant had engaged in misconduct.

11
12 2.15 On January 17, 2001, Judy Walker, Registered Nurse 3, conducted a meeting with Appellant
13 and his union representative. During the meeting, Appellant admitted he had been upset with Ms.
14 Low and used the word "bullshit." Appellant stated, however, that he did not yell at Ms. Low and
15 therefore could not have been overheard by any of the patients. Ms. Walker completed an
16 Investigation of Conduct Report and submitted it to Mr. Wilson.

17
18 2.16 Mr. Wilson reviewed the written statements by Ms. Low and Mr. Egan, the Conduct
19 Investigation Report, the Investigation of Conduct Report, and the relevant agency policies. Mr.
20 Wilson determined that Appellant's behavior was unacceptable, and he had clearly engaged in
21 misconduct. Mr. Wilson concluded that Appellant had neglected his duty to treat co-workers with
22 dignity and respect, and he engaged in gross misconduct by negatively impacting the hospital's
23 ability to carry out its mission.

24
25 2.17 Mr. Wilson determined that Appellant violated Eastern State Hospital Policy 2.9 (Patient
26 Abuse Policy) by speaking in a loud voice and using profanity while patients were in the adjoining

1 day room. Further, Mr. Wilson determined that Appellant violated Eastern State Policy 1.37 (Non-
2 Patient Care Problem Solving) and Eastern State Hospital Policy 1.41 (Workplace Violence) by
3 behaving in a manner that created fear and psychological distress in his co-workers.

4
5 2.18 In determining the level of discipline, Mr. Wilson reviewed Appellant's personnel file and
6 history of prior disciplinary action, letters of counseling, and letters of reprimand. Mr. Wilson
7 considered that Appellant, as a shift charge "lead worker," had a duty to model appropriate behavior
8 to other staff. Mr. Wilson determined that Appellant's misconduct damaged his ability to lead other
9 staff and undermined his effectiveness to perform his duties in a leadership role.

10
11 2.19 Mr. Wilson concluded that demotion from a Mental Health Licensed Practical Nurse 4 to
12 Mental Health Licensed Practical Nurse 2 was the appropriate sanction based on the serious nature
13 of Appellant's misconduct, and that it would prevent recurrence and deter others from similar
14 behavior.

15 **II. ARGUMENTS OF THE PARTIES**

16 3.1 Respondent argues that Appellant spoke to Ms. Low in an abusive and intimidating manner
17 and directed profanity at her. Respondent asserts that Appellant, as a lead worker, had a greater
18 expectation to be a role model and set an example for other staff. Respondent contends that
19 Appellant did not treat Ms. Low with respect and dignity, nor did he attempt to resolve the problem
20 in an appropriate manner. Respondent argues that Appellant's behavior created a hostile and
21 intimidating environment. Respondent asserts that Appellant's behavior counteracted Eastern State
22 Hospital's goal to provide a calm, therapeutic environment for the patients. Respondent contends
23 that there were patients in the adjoining day room who could have heard Appellant's loud tone of
24 voice and profanity. Respondent argues that Appellant's behavior constituted neglect of duty, gross
25 misconduct, and willful violation of agency policies. Respondent asserts that demotion was the
26 appropriate sanction in this case and asks the Board to uphold that decision.

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2 3.2 Appellant argues that his interaction with Ms. Low was meant to be lighthearted and began
3 in a joking manner; however, she misinterpreted his intentions. Appellant admits he approached
4 Ms. Low and said, “Hey, I have a bone to pick with you.” Appellant asserts he was only somewhat
5 frustrated about his water bottle being thrown away, and he denies yelling at Ms. Low. Appellant
6 contends there is no evidence to support Respondent’s claim that patients in the day room overheard
7 the discussion at the nurses’ station. Appellant argues that he has been an employee of Eastern
8 State Hospital since 1985, and his performance evaluations reflect that he has performed his job
9 well in most categories. Respondent asserts that the sanction of demotion from a Mental Health
10 Licensed Practical Nurse 4 to a Mental Health Licensed Practical Nurse 2 was too severe and asks
11 the Board to grant his appeal.
12

13 IV. CONCLUSIONS OF LAW

14 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
15 herein.
16

17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
18 the charges upon which the action was initiated by proving by a preponderance of the credible
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
20 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep’t of
21 Corrections, PAB No. D82-084 (1983).
22

23 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
24 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep’t
25 of Social & Health Services, PAB No. D86-119 (1987).
26

1 4.4 Respondent has met its burden of proof that Appellant neglected his duty to treat his co-
2 workers with dignity and respect, and to use established problem solving policies when
3 disagreements arose between co-workers. Appellant clearly failed to behave in a professional
4 manner when he spoke to Ms. Low in a loud, intimidating voice and then directed profanity at her.
5 Appellant further neglected his duty by failing to create an environment free from intimidation and
6 hostility and by failing to model appropriate behavior as a “lead worker.”

7
8 4.5 Gross misconduct is flagrant misbehavior that adversely affects the agency’s ability to carry
9 out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant
10 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's
11 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

12
13 4.6 Respondent has failed to meet its burden of proof that Appellant’s actions rose to the level
14 of gross misconduct. Respondent failed to establish that Appellant’s behavior toward Ms. Low
15 adversely impacted Eastern State Hospital’s ability to carry out its functions; therefore, the charge
16 of gross misconduct is not sustained.

17
18 4.7 Willful violation of published employing agency or institution or Personnel Resources
19 Board rules or regulations is established by facts showing the existence and publication of the rules
20 or regulations, Appellant’s knowledge of the rules or regulations, and failure to comply with the
21 rules or regulations. Skaalheim v. Dep’t of Social & Health Services, PAB No. D93-053 (1994).

22
23 4.8 Respondent has met its burden of proving that Appellant willfully violated Eastern State
24 Hospital Policies 1.37 (Non-Patient Care Problem Solving) and 1.41 (Workplace Violence) by
25 failing to use established problem solving policies, and by using intimidation and offensive
26 language that alarmed and offended Ms. Low and Mr. Egan.

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2 4.9 Respondent has failed to prove that Appellant violated Eastern State Hospital Policy 2.9
3 (Patient Abuse). During the interaction between Appellant and Ms. Low, the patients were in
4 another room, specifically the day room, and Respondent failed to establish that the patients
5 witnessed or heard the interaction at the nurses' station or had been affected by it.

6
7 4.10 Although it is not appropriate to initiate discipline based on prior formal and informal
8 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the
9 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.
10 D93-163 (1995).

11
12 4.11 In determining whether a sanction imposed is appropriate, consideration must be given to
13 the facts and circumstances, including the seriousness and circumstances of the offenses. The
14 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
15 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
16 program. An action does not necessarily fail if one cause is not sustained unless the entire action
17 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

18
19 4.12 Appellant's behavior was clearly inappropriate and unprofessional and is not condoned by
20 the Board; however, it did not rise to the level of gross misconduct. Furthermore, Respondent
21 failed to prove that Appellant violated Eastern State Hospital Policy 2.9 (Patient Abuse).
22 Respondent has met its burden of supporting the remaining charges.

23
24 4.13 After considering the totality of the proven facts and circumstances, we find that demotion
25 to a Mental Health Licensed Practical Nurse 2 was too severe. Therefore, Appellant's disciplinary
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1 sanction should be modified to a demotion to a Mental Health Licensed Practical Nurse 3, which is
2 a job classification that does not have lead responsibility on an on-going basis.

3
4 **V. ORDER**

5 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Gerald Griffin is granted in
6 part. Appellant's demotion to a Mental Health Licensed Practical Nurse 2 is modified to a
7 demotion at the Mental Health Licensed Practical Nurse 3 job classification.

8
9 DATED this _____ day of _____, 2003.

10
11 WASHINGTON STATE PERSONNEL APPEALS BOARD

12
13 _____
14 Walter T. Hubbard, Chair

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16 _____
17 Gerald L. Morgen, Vice Chair